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EXAMINER

GYORFI, THOMAS A

ART UNIT	PAPER NUMBER
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2135

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/781,201

Applicant(s)

WOOD, ROGER D.

Examiner

Tom Gyorfi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to..
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-30 remain for examination.

Response to Arguments

2. Applicant's request for an interview in the amendment filed 2/20/07 is acknowledged. Examiner wishes to state for the record that multiple attempts were made during March 2007 to arrange an interview with the Applicant, Applicant's representative, the Examiner, and at least one Primary or Supervisory Examiner. To the best of Examiner's recollection, Examiner was contacted via telephone by Applicant's representative on or about March 12, 2007, to inform Examiner that they had been unable to commit to any previous attempts to schedule an interview due to communication difficulties between the Applicant and Applicant's representative. Examiner was informed at that time that once Applicant's representative had contacted the Applicant in order to determine Applicant's availability for an interview, Examiner would receive a follow-up phone call to propose a tentative date for said interview; however, to date no such phone call had been received by the Examiner.
3. Applicant's arguments filed 2/20/07 have been fully considered but they are not persuasive.
4. In response to applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning (see page 15, 3rd paragraph), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. However, a suggestion, teaching, or

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motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teachings, motivation, or suggestion may be implicit from the prior art, as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of a whole would have suggested to those of ordinary skill in the art. *In re Kahn*, 441 F.3d 977, 988, 78, USPQ2d 1329, 1336 (Fed. Cir. 2006) citing *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313 (Fed. Cir. 2000). See also *In re Thrift*, 298 F. 3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In this case, it is noted that as the Richley patent [filed September 15, 1998] was invented subsequent to the Freeman patent [filed April 17, 1998], Examiner fails to see how Freeman could reasonably have been expected to explicitly disclose an embodiment of his invention using the particular novel display invented by Richley.

5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the particular configuration of power supplies – see page 15 of the amendment, bottom paragraph) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims are silent regarding a requirement of multiple power supplies, including at least one internal and at least one external supply.

6. Applicant's third argument on page 16, 2nd paragraph fails to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant dismisses the combination of references as "impractical" and states "...the Richley reference specifically teaches away from the purported §103 combination", but fails to point to even one passage of the Richley reference which allegedly teaches away from the combination. At best, Applicant's argument constitutes a conclusory statement that is unsupported by the evidence.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-2, 5, 7-14, 17-21, 24-25, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. Patent 6,068,183), and further in view of Richley et al. (U.S. Patent 6,348,908).

Referring to Claim 1:

Freeman discloses a portable authentication device, comprising: a body (Fig 1A; col. 2, lines 50-60); a contact area disposed in said body (col. 2, lines 60-65); an identification portion disposed in said body (col. 2, lines 59-62); a display area disposed

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in said body (col. 3, lines 1-10; col. 6, lines 10-30); and a processor, disposed in said body, for providing data to said active display (col. 3, lines 30-40).

Freeman does not appear to disclose wherein the display is an active reflective bistable display. However, Richley discloses such a device (col. 2, lines 63-67), which is capable of being used in portable devices (col. 14, lines 25-27). It would have been obvious to use the active reflective bistable display found in Richley as the display means in the device disclosed by Freeman. The motivation for doing so would be to use a screen technology that confers the benefits of a powered display such as can be found in at least one embodiment of Freeman (col. 6, lines 31-35) without actually requiring an external power source that would make the device more cumbersome to use (Richley, col. 2, lines 45-55).

It is noted here that the Richley invention is a Gyricon display (e.g. col. 5, lines 55-65, and Fig. 4), which is a known prior art technology that Applicant has admitted is an "active reflective bistable display" (see the instant specification, page 7, lines 15-19).

Referring to Claim 17:

Freeman discloses an authentication system, comprising: a portable authentication device having a display (col. 3, lines 1-10; col. 6, lines 10-30); a database server (col. 4, lines 15-30, 40-50); and an authentication device interface, coupling said portable authentication device and said database server (Fig 3).

Freeman does not appear to disclose wherein the display is an active reflective bistable display. However, Richley discloses such a device (col. 2, lines 63-67), which is capable of being used in portable devices (col. 14, lines 25-27). It would have been

obvious to use the active reflective bistable display found in Richley as the display means in the device disclosed by Freeman. The motivation for doing so would be to use a screen technology that confers the benefits of a powered display such as can be found in at least one embodiment of Freeman (col. 6, lines 31-35) without actually requiring an external power source that would make the device more cumbersome to use (Richley, col. 2, lines 45-55).

Referring to Claim 23:

Freeman discloses a method for authenticating a patron having an authentication device, comprising: providing an authentication device having; a display (col. 6, lines 10-30); updating a database server with authentication data associated with a venue (col. 5, lines 10-15, 50-65); displaying display data corresponding to the authentication data on the authentication device (col. 5, lines 60-65); establishing a communication between the authentication device and the database server; and deciding whether to grant the patron access to the venue based on the communication (col. 2, lines 1-10; col. 5, lines 40-65).

Freeman does not appear to disclose wherein the display is an active reflective bistable display. However, Richley discloses such a device (col. 2, lines 63-67), which is capable of being used in portable devices (col. 14, lines 25-27). It would have been obvious to use the active reflective bistable display found in Richley as the display means in the device disclosed by Freeman. The motivation for doing so would be to use a screen technology that confers the benefits of a powered display such as can be

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found in at least one embodiment of Freeman (col. 6, lines 31-35) without actually requiring an external power source that would make the device more cumbersome to use (Richley, col. 2, lines 45-55).

Referring to Claim 2:

Freeman and Richley disclose the limitations of Claim 1 above. Freeman further discloses a card approximating a size and shape of a standard credit card (col. 2, lines 15-25; col. 6, lines 55-65).

Referring to Claim 5:

Freeman and Richley disclose the limitations of Claim 1 above. Freeman further discloses said contact area further comprising: a contact enabled for receiving externally-supplied power (col. 3, lines 30-35; col. 6, lines 45-55).

Referring to Claim 7:

Freeman and Richley disclose the limitations of Claim 1 above. Freeman further discloses said active display comprising: a variable display (col. 6, lines 10-30); wherein said variable display is enabled for bistable display of authentication information (col. 2, lines 1-10).

Referring to Claim 8:

Freeman and Richley disclose the limitations of Claim 1 above. Freeman further discloses a machine-readable portion, coupled to said body, enabled for storage of machine-readable data (Fig 7; col. 15, lines 15-23).

Referring to Claim 9:

Freeman and Richley disclose the limitations of Claim 8 above. Freeman further discloses said machine-readable portion comprises at least one of a magnetic strip and an optically-readable portion (Fig 1B; col. 2, lines 60-67; col. 5, lines 15-23).

Referring to Claim 10:

Freeman and Richley disclose the limitations of Claim 1 above. Freeman further discloses a communication portion, coupled to said body, for enabling said authentication device for wireless communication between said authentication device and an authentication device interface (col. 2, lines 65-68).

Referring to Claim 11:

Freeman and Richley disclose the limitations of Claim 10 above. Freeman further discloses said communication portion comprising: a wireless transmitter/receiver (Fig 5A; col. 2, lines 65-68).

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Referring to Claim 12:

Freeman and Richley disclose the limitations of Claim 11 above. Freeman further discloses said communication portion further comprising: means for communicating data between said wireless transmitter/receiver and a location external to said authentication device (col. 2, lines 65-68; col. 5, lines 25-45).

Referring to Claim 13:

Freeman and Richley disclose the limitations of Claim 12 above. Freeman further discloses said means for communicating comprise an antenna embedded in said body (col. 2, lines 65-68).

Referring to Claim 14:

Freeman and Richley disclose the limitations of Claim 1 above. Freeman further discloses a memory portion, disposed in said body, enabled for storing data (col. 3, lines 45-55).

Referring to Claim 18:

Freeman and Richley disclose the limitations of Claim 17 above. Freeman further discloses an authentication device reader, coupled to said authentication device data interface, for communicating directly with and identifying said portable authentication device (col. 2, lines 30-35; Fig 3-4; col. 4, lines 15-30; col. 2, lines 1-10).

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Referring to Claim 19:

Freeman and Richley disclose the limitations of Claim 17 above. Freeman further discloses a public network in communication with each of said portable authentication device, said database server and said authentication device interface (col. 5, lines 50-65; Fig 5A).

Referring to Claim 20:

Freeman and Richley disclose the limitations of Claim 17 above. Freeman further discloses a venue portion, coupling said database server and said authentication device data interface; wherein said venue portion communicates authentication data associated with a venue to said authentication device interface upon detection of said authentication device (col. 5, lines 50-65; col. 2, lines 1-10).

Referring to Claim 21:

Freeman and Richley disclose the limitations of Claim 17 above. Freeman further discloses a patron portion, coupling said database server and said authentication device interface; wherein said patron portion communicates authentication data associated with a venue to said database server in response to a request by a patron (col. 5, lines 50-62; Fig 3-5A).

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Referring to Claim 24:

Freeman and Richley disclose the limitations of Claim 23 above. Freeman further discloses comparing identification data of the authentication device and the authentication data; and granting to the patron access to the venue if the identification data of the authentication device and the authentication data match (col. 2, lines 1-10; col. 5, lines 55-65).

Referring to Claim 25:

Freeman and Richley disclose the limitations of Claim 24 above. Freeman further discloses the identification data is identifiable with the patron based on patron data stored in the database server (col. 4, lines 5-35).

Referring to Claim 27:

Freeman and Richley disclose the limitations of Claim 23 above. Freeman further discloses said establishing is of a communication link between an authentication device interface located at venue and the database server (Fig 5A; col. 5, lines 50-65).

Referring to Claim 28:

Freeman and Richley disclose the limitations of Claim 23 above. Freeman further discloses receiving a request from the patron for authorization to enter the venue; wherein said updating is in response to the request (col. 2, lines 1-10).

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Referring to Claim 29:

Freeman and Richley disclose the limitations of Claim 28 above. Freeman further discloses the request is received from a location remote to the database server (Fig 3; col. 5, lines 1-20; col. 5, lines 50-65).

Referring to Claim 30:

Freeman and Richley disclose the limitations of Claim 23 above. Freeman further discloses said establishing takes place over a public network (Figures 3-5A; and col. 5, lines 40-60).

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman in view of Richley as applied to claim 2 above, and further in view of Haddock et al. (U.S. Patent 4,736,966).

Referring to Claim 3:

Freeman and Richley disclose the limitations as discussed in claim 2 above. Neither Freeman nor Richley disclose "said card is approximately 85 millimeters (mm) in length, 55mm in width, and 1mm thick." However, Freeman does disclose that the card is readable by ATM machines. In addition, Haddock teaches that a standard credit card size that permits usage in an ATM machine is 85mm X 55mm (Haddock, col. 3, lines 5-15) X approximately 1mm (col. 1, lines 65-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Freeman in view of

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Richley such that the card is approximately 85mm in length, 55mm in width, and approximately 1mm thick as taught by Haddock. The motivation for doing so would be to allow the card to be used like a regular banking/credit card (Freeman, col. 6, lines 55-65, and Figure 7).

10. Claims 4, 6, 15, 16, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman and Richley as applied to claims 1-2 and 23 above, and further in view of Gray (U.S. Patent 6,268,788).

Referring to Claim 4:

Freeman and Richley disclose the limitations as discussed in Claim 2 above.

Neither Freeman nor Richley explicitly disclose "said portable authentication device is enabled for communication with an authentication device interface, said processor being enabled for processing authentication information received from the authentication device interface."

Gray discloses said portable authentication device is enabled for communication with an authentication device interface (Fig. 12B), said processor being enabled for processing authentication information received from the authentication device interface (col. 15, lines 1-10).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Freeman in view of Richley such that the card can process authentication information as taught by Gray. One of ordinary skill

in the art would have been motivated to do this because it would the system to verify the identity of the person using the card (col. 2, lines 40-50).

Referring to Claim 6:

Freeman and Richley disclose the limitations as discussed in Claim 1 above.

Neither Freeman nor Richley explicitly disclose "contact area further comprising: a contact enabled for communication of data between said authentication device and an authentication device interface."

Gray discloses contact area further comprising: a contact enabled for communication of data between said authentication device and an authentication device interface (Fig. 8-12).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Freeman in view of Richley such that a contact enabled for communication of data between said authentication device and an authentication device interface. One of ordinary skill in the art would have been motivated to do this because it would the system to verify the identity of the person using the card (col. 2, lines 40-50).

Referring to Claim 15:

Freeman and Richley disclose the limitations as discussed in Claim 1 above.

Neither Freeman nor Richley explicitly disclose, "said memory portion stores biometric identification data of a patron."

Gray discloses said memory portion stores biometric identification data of a patron (col. 13, lines 40-45).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Freeman in view of Richley such that a memory portion stores biometric identification data of a patron. One of ordinary skill in the art would have been motivated to do this because it would the system to verify the identity of the person using the card (col. 2, lines 40-50).

Referring to Claim 16:

Freeman in view of Richley in view of Gray discloses the limitations as discussed in Claim 15 above. Freeman further discloses said memory portion stores data for at least one of display in said active display area, for user authentication, for patron preferences and for system data (col. 3, lines 30-40; 45-55).

Referring to Claim 26:

Freeman and Richley disclose the limitations as discussed in Claim 23 above.

Neither Freeman nor Richley explicitly disclose, "verifying an association between the patron and the authentication device prior to said granting."

Gray discloses verifying an association between the patron and the authentication device prior to said granting (col. 13, lines 40-45; col. 15, lines 1-15).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Freeman in view of Richley such that an association

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between the patron and the authentication device is verified prior to said granting. One of ordinary skill in the art would have been motivated to do this because it would the system to verify the identity of the person using the card (col. 2, lines 40-50).

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman and Richley as applied to claim 17 above, and further in view of Gebb (U.S. Patent 6,067,532).

Referring to claim 22:

Freeman and Richley disclose the limitations as discussed in Claim 17 above.

Neither Freeman nor Richley explicitly disclose "a phone ordering interface, coupling said database server to a public network; wherein said phone ordering interface communicates authentication data associated with a venue to said database server in response to a request by a patron received via a public switched telephone network (PSTN)". However, Freeman does disclose the use of a public network which uses a modem, a modem being known in the art as a device for converting digital signals into analog signals for use on a telephone network. A user can buy tickets via this network (Fig. 5A; col. 5, lines 50-65). In addition, Gebb discloses a phone ordering interface, coupling a database server to a public network (col. 4, lines 35-45) wherein said phone ordering interface communicates authentication data associated with a venue to a database server in response to a request by a patron received through a phone network (col. 6, lines 5-15). It would have been obvious to one of ordinary skill in

the art at the time the invention was made to modify Freeman in view of Richley such that the ticket could be ordered over the phone, as taught by Gebb. The motivation for doing so would be to reduce box-office lines (Freeman, col. 5, lines 55-65).

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Gyorfi whose telephone number is (571) 272-3849. The examiner can normally be reached on 8:30am - 5:00pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TAG
4/19/07



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